

106 CMR: Department of Transitional Assistance

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Fair Information Practices  
Administrative Appeals

Chapter 107  
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SECTION

107.000

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**107.010: Appeal of Department Denial of Access or Decision of Responsible Officer**

Any data subject who wishes to challenge either the department denial, pursuant to section 105.070, of his request for access or the decision of the officer in charge of a personal data system pursuant to section 106.020 may appeal such denial or decision to the Commissioner of Transitional Assistance. Such appeal shall be filed in writing within thirty (30) days of the data subject's receipt of notification of the agency denial or the decision of the officer.

**107.020: Appeal to the Commissioner or His Designee**

The Commissioner or his designee hearing an appeal filed pursuant to section 107.010 shall, at the request of the appellant data subject, convene an adjudicatory hearing, pursuant to Chapter 30A of the General Laws, within thirty (30) days of the filing of such appeal, and shall render a decision on the merits within thirty (30) days of the conclusion of such hearing. Within seven (7) days of rendering his decision, the Commissioner or his designee shall send written notification to the appellant data subject and to the appellee responsible officer regarding the nature of the decision and the reasons therefor. If such decision is adverse to the data subject, such notification shall include notice, in terms comprehensible to the data subject, of the right of the data subject to further review pursuant to section 107.030.

**107.030: Appeal to Executive Office of Human Services**

- (A) Any data subject who wishes to challenge the decision of the Commissioner rendered pursuant to section 107.020, may appeal such decision to the Secretary of Human Services or his designee. Such appeal shall be filed in writing within thirty (30) days of the data subject's receipt of notification of the decision of the Commissioner.
- (B) In hearing an appeal under this section, the Secretary or his designee shall limit his review to an interpretation of the relevant statutes and regulations and their application to the fact in each case being appealed. The Secretary or his designee shall not review, in any way, the decision of the Commissioner with regard to the factual issues in each case. The Secretary or his designee may, at his discretion, conduct a hearing, on terms and in a format which he deems appropriate, for the purpose of receiving arguments on issues which he deems appropriate, for the purpose of receiving arguments on issues which he deems appropriate, for the purpose of receiving arguments on issues which he deems pertinent to his review. The Secretary or his designee shall convene such hearing, if at all, within (30) days of the filing of the appeal.
- (C) The Secretary or his designee shall render a decision within thirty

(30) days of the filing of the appeal or within thirty (30) days of the conclusion of the hearing, if any, whichever is later. The Secretary or his designee shall send written notification to the appellant data subject and to the Commissioner of his decision and the reasons therefor.

(D) A decision rendered pursuant to section 107.030(C) shall be the final and conclusive administrative determination of the issues in controversy in each case.

107.040: Failure To Render A Decision

Any failure to render a decision at any stage of the appeal process within the time period set out in this Chapter shall result in a decision favorable to the appellant data subject, except that the time periods may be extended by agreement between the data subject and the department.

107.050: Judicial Relief

The procedure established by section 107.030 shall constitute an additional remedy which may be employed or abandoned or any time in favor of the judicial remedy provided by G.L.c. 214, § 3B, the department shall not interpose any defense of failure to exhaust administrative remedies in case of any civil action pursuant to said § 3B for failure to use the section 107.030 procedure.